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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

# Situation of human rights in Cambodia

## Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with Commission resolution 1996/54

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## Introduction

1. The Secretary-General appointed Mr. Thomas Hammarberg as his new Special Representative on human rights in Cambodia early in 1996, following the resignation of Mr. Michael Kirby subsequent to his appointment to the High Court of Australia. The appointment of Mr. Hammarberg was communicated to the interim Head of State and the Government of Cambodia by the United Nations High Commissioner for Human Rights during his mission to Cambodia from 27 February to 2 March 1996. Mr. Hammarberg is currently Ambassador and Special Advisor on Humanitarian Issues to the Government of Sweden and a member of the United Nations Committee on the Rights of the Child. He took up his functions as Special Representative on 1 May 1996.

2. The Special Representative is to undertake the following tasks as requested by the Commission on Human Rights in its resolution 1993/6 of 19 February 1993:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

3. The new Special Representative undertook his first mission to Cambodia from 25 June to 6 July 1996 and reported to the General Assembly at its fifty-first session (A/51/453) pursuant to the request of the General Assembly in its resolution 50/178 of 22 December 1995.

4. The Commission on Human Rights at its fifty-first session, in its resolution 1996/54 of 19 April 1996, entitled "Situation of human rights in Cambodia", welcomed the appointment by the Secretary-General of Mr. Hammarberg as his new Special Representative and requested the Special Representative to continue his evaluation of the extent to which the recommendations made so far were followed up and implemented.

5. In the same resolution the Commission requested the Special Representative to report to the Commission at its fifty-third session. The Special Representative undertook his second mission to Cambodia from 1 to 13 December 1996 and submits the present report pursuant to that request.

6. The Commission also noted that communal elections were due to be held in 1997 and National Assembly elections in 1998, and strongly urged the Government of Cambodia to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, stand for election, take part freely in a representative Government and freedom of expression, in accordance with the principles set out in paragraphs 2 and 4 of annex 5 to the Agreement signed in Paris on 23 October 1991.

7. The Commission expressed grave concern about the atrocities that continued to be committed by the Khmer Rouge, including the taking and killing of hostages, and other deplorable incidents detailed in the reports of the Special Representative.

8. The Commission also expressed grave concern about the serious violations of human rights as detailed by the Special Representative in his report, and called upon the Government of Cambodia to prosecute, in accordance with due process of law and international standards relating to human rights, all those who had perpetrated human rights violations.

9. The Commission expressed particularly grave concern at the comments made by the Special Representative concerning the reluctance of the courts to charge members of the military and other security forces for serious criminal offences, and encouraged the Government of Cambodia to address that problem, which in effect placed persons in authority above the principle of equality before the law.

10. The Commission on Human Rights expressed grave concern at the devastating consequences and destabilizing effects of the indiscriminate use of anti-personnel landmines on Cambodian society, encouraged the Government of Cambodia to continue its support and efforts for the removal of those mines, and welcomed the intention of the Government of Cambodia to ban all anti-personnel landmines.

11. The Commission called upon the Government of Cambodia to ensure the full observance of human rights for all persons within its jurisdiction in accordance with the International Covenants on Human Rights and other human rights instruments to which Cambodia is a party.

12. The Commission on Human Rights also requested the Secretary-General to provide all necessary resources, from within the regular budget of the United Nations, to enable the Special Representative to continue to fulfil his tasks expeditiously.

## I. SECOND MISSION TO CAMBODIA OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL (1-13 DECEMBER 1996)

13. The Special Representative visited Cambodia from 1 to 13 December 1996 in order to follow up on the four main areas of concern selected during his previous visit: protection of children from trafficking and exploitation, administration of justice and the problem of impunity, anti-personnel landmines, and political rights and freedoms in the perspective of the elections. He also began to examine new areas of concern: labour rights, torture and ill-treatment of prisoners and detainees, and further aspects of impunity.

14. His Majesty King Norodom Sihanouk graciously received the Special Representative in audience in the Throne Hall of the Royal Palace. As constitutional "Protector of rights and freedom for all citizens", His Majesty expressed concern about the deteriorating political situation and the potential implications for the protection and promotion of human rights and freedoms. Other topics discussed were the political obstacles to the

convening of the Supreme Council of Magistracy, His Majesty's proposal for an amnesty to deserving Cambodian prisoners on the occasion of his 74th birthday, and the issue of institutional impunity. To facilitate the granting of amnesty or pardons to detainees and prisoners, the Special Representative suggested the idea of the formation of a technical body under the authority of the King which would define criteria for the selection of deserving prisoners and for screening them. National and international organizations working in Cambodia with experience in this field could be associated with the work of such a body.

15. The Special Representative also met with His Royal Highness the First Prime Minister, Prince Norodom Ranariddh who spoke of his determination to combat child abuse and trafficking and expressed his firm support for the repeal of article 51 of the Law on Civil Servants (the Second Prime Minister, Mr. Hun Sen, had supported the repeal of that article when the Special Representative met him in July 1996). The First Prime Minister said that the lack of prosecution of acts of violence against journalists and newspaper offices, an issue which was the subject of a confidential communication from the Special Representative to the Royal Government in October, reflected a lack of political will to investigate these cases. The First Prime Minister also spoke in favour of recognizing and legalizing the Khmer Nation Party.

16. The Special Representative also met the Minister of Justice, His Excellency Mr. Chem Snguon. The Minister spoke in favour of the repeal of article 51 and the need to put an end to the impunity of government officials responsible for criminal actions, in particular military and police personnel. He emphasized the need for a speedy convening of the Supreme Council of Magistracy, as a condition for improving the organization of the judiciary, and deplored the politicization of the issue. The Minister stressed the need for the Government to increase the budget of the Ministry of Justice and for a continued effort by the international community to assist in the reconstruction of the judiciary.

17. The Special Representative also met the Minister for Foreign Affairs and International Cooperation, His Excellency Mr. Ung Huot, and informed him about the General Assembly resolution on Cambodia.

18. The Special Representative regrets that he could not meet the Second Prime Minister, with whom he intended to pursue the dialogue initiated during his first visit and to raise a number of issues of mutual concern. These issues are discussed in this report. He was also unable to meet the co-Ministers of the Interior, with whom he intended to discuss a number of important matters addressed in this report. He hopes that on the occasion of his next visit, such meetings will be possible.

19. The Special Representative met with the Director of the National Police, General Hok Lundi, with whom he discussed the problem of torture and ill-treatment by police personnel, human rights training for the police, police action in the case of trafficking in children and women, and the deportation of 19 persons of Vietnamese origin to Viet Nam in apparent

violation of the 1951 Convention relating to the Status of Refugees, despite a request by the Office of the United Nations High Commissioner for Refugees (UNHCR), supported by the Special Representative, that more time be allowed to determine their status. (These issues are described in detail in the present report.)

20. Mr. Hammarberg met the Chairmen or high-ranking representatives of the political parties in Cambodia to discuss the current political situation and listen to their views and concerns about the holding of commune and legislative elections in 1997 and 1998. In particular, he stressed the need for fundamental political rights and freedoms to be protected during the electoral campaign, if the elections were to be recognized as free and fair.

21. The party representatives expressed concern about the current volatile political situation and the risk of continued instability if the two major political parties in the Government, the Cambodian People's Party (CPP) and the Front uni national pour un Cambodge indépendant, neutre, pacifique et coopératif (National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia) (FUNCINPEC), did not reestablish basic cooperation.

22. Mr. Hammarberg visited two provinces in order to learn more about conditions in rural areas outside the capital. In Kompong Speu he visited the tribunal, the prison, a rural community of persons internally displaced by fighting, and a Red Cross workshop producing artificial limbs for victims of mines. He met and held discussions on the human rights situation in the province with the Governor, the court judges and prosecutors, local human rights organizations and police officers. A recurrent theme of discussion with the provincial authorities was the continuing problem of the involvement of military personnel in widespread abuses and the admitted powerlessness of the provincial authorities to bring them under the law.

23. In Kompong Chhnang the Special Representative visited the remote village of Krang Kontro, where on 18 September 1996 six children and two soldiers had been killed and seven other children injured by a group of drunken soldiers who had fired a B-40 rocket into a local outdoor restaurant. Upon his return he raised the matter with the Vice Governor of the province and the deputy Commander of the Special Military Region.

24. In Phnom Penh the Special Representative visited two large garment factories which employ several hundred, mostly female, workers. There he held discussions with management and workers about working conditions and the protection of basic labour rights.

25. The Special Representative also attended a meeting of the United Nations Theme Group on Governance, Democracy and Human Rights which focused on the deteriorating conditions in Cambodian prisons. In addition, he pursued his contacts with diplomatic representatives accredited to Cambodia and held fruitful exchanges with the Ambassadors and diplomatic representatives of the Association of South-East Asian Nations (ASEAN) countries and of Japan, Australia, France and the United States.

26. The Special Representative regrets that a meeting on Human Rights Day on 10 December 1996 could not be organized as a non-partisan manifestation that would demonstrate that human rights values are a common concern and should thus be maintained above party politics. For this reason, he decided not to participate in the event.

## II. SELECTED AREAS OF CONCERN

### A. Labour Rights

27. The Constitution of Cambodia provides explicit provisions for the protection of workers in Cambodia. Article 36 gives citizens the "right to form and be members of trade unions" and requires gender neutrality through "equal pay for equal work". Article 37 provides the "right to strike and non-violent demonstration". Article 41 protects the rights to freedom of expression and assembly. Article 42 establishes the right to freedom of association. Article 45 prohibits all forms of discrimination against women and states that "the exploitation of women in employment shall be prohibited". Article 46 states that "a woman shall not lose her job because of pregnancy" and that women have the right to maternity leave "with full pay and no loss of seniority and other benefits". Rights relating to children are specified in article 48, which incorporates the Convention on the Rights of the Child in the Constitution. Article 75 states that "the State shall establish a social security system for workers and employees". Cambodia is also a party to the International Covenant on Economic, Social and Cultural Rights, article 7 of which pertains to the rights of workers.

28. According to the most recent figures available, Cambodia has approximately 5.5 million persons of working age, 4 million of whom are considered to be in the active labour force. In this group, 75.1 per cent work in agriculture, 4.5 per cent in industry and 20.4 per cent in the service sector. Most of the service sector consists of small, self-employed or family employed shopowners and vendors and civil servants. According to the Socio-Economic Survey of 1993/1994, almost 5 per cent of all children between 10 and 15 years of age were working.

29. Less than 10 per cent of the labour force is engaged in wage employment. However, as Cambodia becomes more integrated in the regional and global economy, foreign investment in labour-intensive industries is expected to increase dramatically. This is expected to increase the percentage of wage earners substantially. One burgeoning new industry is the garment industry. At the time of the writing of this report, 36 garment factories had established operations. Over 90 per cent of their employees are women. The number of factories is expected to increase sharply after the granting of "Most Favoured Nation" and GSP (Generalized System of Preferences) status by the United States. Almost all of the products of the garment industry are for export, particularly to the countries of the European Union and Japan. While new investment in the garment and other industries brings thousands of new jobs and a significant injection of capital into Cambodia's small economy, such labour-intensive industries also present a significant possibility of abuse owing to the enormous gap in the bargaining positions of labour and management.

30. The Special Representative visited two garment factories in Phnom Penh in December 1996. He also interviewed garment workers outside their workplaces. Reliable information brought to the attention of the Special Representative from multiple sources indicates that many companies pay scant attention to basic workers rights and legal requirements.

31. Many garment factories require workers to work more than the legal maximum of eight hours per day. Many require workers to work seven days per week, instead of the legal maximum of six. Some require between 10 and 12 hours of work per day and sometimes more, seven days per week. Some workers report being required to work 24-hour shifts when their companies have large orders to fill. Although employers are required by law to pay higher hourly wages for hours worked in excess of the legal limit, many workers report that they never or only occasionally receive higher rates for overtime. Disproportionately large amounts are often deducted from wages for unauthorized absences. The lack of a detailed pay slip at the end of each month prevents employees from verifying whether the salary they receive correspond to the effective number of work hours performed.

32. The garment factories do not permit their workers to take any annual leave. Many of these factories require workers to work on public holidays. Some do not pay the legally required higher hourly wages for such work. Four garment factories allow women to take three months of maternity leave at half pay, whereas the Constitution requires full pay for maternity leave. Eight others allow maternity leave but provide no pay. Others either have not had any women request maternity leave or do not allow it at all. Some workers claim that pregnant women are forced to resign. No factory provides creches or breastfeeding areas for mothers of young children. Some companies discriminate by hiring only women or persons under a certain age, such as 35. For many female workers, becoming pregnant means losing their job.

33. Worker safety is a particular concern. Many factories have inadequate ventilation, greatly exacerbating the already hot and humid climate. Most companies have not given workers protective masks to guard against the dangerous dust created from the woven fabric. Most factories have an inadequate number of toilets for the number of workers employed and, often, the water is not clean and the bathrooms are not hygienic. Only a few factories have medical clinics. Most companies do not offer paid sick leave or provide medical treatment for workers, even in the case of on-the-job accidents.

34. Many workers complain about poor electrical wiring and inadequate numbers of fire exits. In one factory, "Integrity Appareils Garments Ltd.", visited by the Special Representative and employing approximately 800 workers in one large room, there was only one available exit. The only other exit was padlocked and company officials refused to unlock it, citing concerns about theft by staff. Workers explained that on a previous occasion when the factory was evacuated because of overheating of electrical wires, workers were made to stand in line and wait to be body searched before being allowed to leave. During one break while the Special Representative was present, it took 15 minutes for all the workers to leave the building after being searched. The risk of large numbers of deaths or injuries in the case of fire is serious.

35. Management abuses were reported to the Special Representative, such as public stripping of female workers accused of stealing factory property. Some garment workers also reported being locked up in the factory until the work is finished. In one factory, workers' shoes were held until the required work was finished.

36. Visits by labour inspectors to places of employment are sporadic. Many factory workers report that inspectors usually speak only to employers when they visit. Many workers fear that complaints will be responded to with dismissal. It is unclear what concrete action, if any, the labour inspectors have taken in response to labour violations such as those readily apparent to the Special Representative on his visit. It is the labour inspector's role to monitor labour issues and to conciliate when there are disputes between employees and employers. Unsolved cases should result in legal action, although this appears to be rare. Members of the Ministry of Labour inspectorate state that the department is politically weak, administrative procedures are unclear and the budget to enforce the law is insufficient.

37. Salaries in garment factories have been very low, starting at approximately 30 US dollars a month. Most workers have been paid by the piece. In spite of these low salaries, many Cambodians have had no other employment possibilities and so have not complained. In many cases workers have been summarily dismissed for absences without permission, for small mistakes in production or for non-stated reasons. Many workers have reported that the penalty for refusal to work the required overtime is dismissal or loss of pay for hours already worked.

38. A new labour law was passed in Cambodia on 10 January 1997. The new Labour Law is in many respects similar to the previous 1992 State of Cambodia Labour Law with the addition of important provisions allowing the right to form unions, the right to collective bargaining, the right to strike and the right to bring legal action if the employer refuses to bargain. Such improvements are essential to a legislative framework protecting basic workers' rights and are endorsed strongly by the Special Rapporteur.

39. Until recently there were no independent labour unions in any of the garment factories or anywhere else in Cambodia. The state-controlled Cambodian Federation of Trade Unions, established in 1979, has not had any member branches since 1993. One reason seems to be the lack of any tradition of labour organizing and collective bargaining in Cambodia. In fact, the previous Labour Law prohibited independent labour unions and collective bargaining. In the past, workers in private enterprises were not permitted to form independent labor unions. As a result, workers have had no representation and no procedure to express concerns or problems to employers. Perhaps most important has been the fear that organizing or complaining may result in dismissal.

40. However, a trade union organization, the Free Trade Union of the Workers of the Kingdom of Cambodia, was formed on 15 December 1996 with the support of the Khmer Nation Party (KNP). At the same time a protest movement started in mid-December in the largest garment factories in Phnom Penh (Cambodia Garments). The protest, involving 3,000 female workers, gained momentum and culminated in a spontaneous march on 19 December. Workers' delegates were

received by the National Assembly and the King. This resulted in the signing by the company and the workers of a mutually satisfactory agreement. This initial success encouraged fellow workers in other garment factories and by mid-January 1997, the movement had spread to six other large factories in the capital.

41. An inter-ministerial committee of the Ministries of Labour and Industry was formed to look into the issue and act as a mediator. On 25 December 1996, the first concertation meeting between that committee and representatives of the 36 garment factories operating in the capital resulted in an agreement to increase the minimum monthly salary from 35 to 40 United States dollars, to limit the weekly number of working hours to 48, to compensate overtime, and to allow workers' representatives elections. These measures were to take effect on 1 January 1997. The companies requested that other demands by the workers should be the subject of negotiations with the elected workers' delegates.

42. On 4 January 1997, a peaceful march to the National Assembly of about 400 workers from Tack Fak Garments factory was dispersed by the police, using water cannons. A female worker was hit in the face with a pistol by a police officer. On 6 January, the police dispersed workers assembled before the factory, beating several protestors, including officials of the KNP who had come to support the workers. The KNP Chairman escaped unhurt when rounds of bullets were fired around his car. By mid-January, when workers in four factories had signed agreements with the management on improved working conditions, the protest movement continued to spread to other factories. On 14 January, the First Prime Minister publicly expressed support for the workers' demands and stated that companies which violated workers' basic rights in disregard of the laws of the Kingdom risked expulsion.

## B. Rights of the child

43. Local and international non-governmental organizations, UNICEF and the Cambodian authorities continue to report that the incidence of abduction and child prostitution is large and growing. During his first mission, the Special Representative gathered a great deal of information about the scope of the problem and potential measures to prevent child prostitution and trafficking. Both Prime Ministers indicated their deep and personal concern about the situation. The First Prime Minister reiterated this position in a meeting with the Special Representative during his second mission, stating that any persons involved in the kidnapping or trafficking of children must be prosecuted to the full extent of the law.

44. The Special Representative welcomes this statement and the high level participation of the Government of Cambodia in the World Congress against Sexual Exploitation of Children, held in Stockholm in August 1996. The Government was represented by senior officials of the Ministries of Justice, the Interior and Social Affairs, the Council of Ministers and advisers to the First Prime Minister and the Deputy Prime Minister. A national plan of action was presented to the Congress. Nine non-governmental organizations and a representative of UNICEF also attended.

45. Article 34 of the Convention on the Rights of the Child obliges States parties to protect children from all forms of sexual exploitation and sexual

abuse: "States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials."

46. The Special Representative is concerned that there appear to have been no arrests and convictions under the January 1996 Law on the Suppression of the Kidnapping, Trafficking, Sale and Exploitation of Human Beings. The Special Representative welcomes the written clarification sent by the Minister of Justice to all courts stating that the law should be enforced immediately. Many courts had interpreted the law as requiring the passage of subordinate regulations, not yet drafted, before implementation.

47. The trade in human flesh and the resulting slavery of children in unspeakable conditions must be addressed with the most urgent of measures. Many girls as young as 10, 11 or 12 years old continue to be found in brothels or reported missing by parents. Such stories are now commonly reported in the Khmer-language press.

48. While some children are sold into prostitution by parents because of poverty, many parents are tricked into believing that their children will receive a salary and education when they send them away. There is a growing and increasingly powerful and well connected network of buyers, middlemen and brothels supporting this illicit trade. Judges, local authorities and even some high ranking government officials admit that much of this trade is carried out by, or with the complicity or the protection of, senior police or military officials.

49. This business is carried out openly and in full knowledge of the authorities. However, with the exception of some well publicized but poorly enforced brothel closures, little action has been taken by law enforcement officials. Many brothel owners appear to receive the protection of local police or other officials.

50. The law provides for prison sentences of from 10 to 15 years for persons involved in this trade. The sentences are increased to between 15 and 20 years when children under the age of 15 are victimized. The fact that there are no known cases of prosecution and conviction under this law is a matter of deep concern. Making arrests in such cases required no further police training or material support. What is lacking is the will. It is time to take action.

51. One additional and compelling reason to take immediate and decisive action is the extremely high prevalence of HIV-AIDS and other sexually transmitted diseases among prostitutes tested. According to NGO workers in this field many, if not most, customers of brothels do not wear condoms. As a result, Cambodia has one of the fastest growing rates of HIV infection in Asia. This scourge threatens an entire generation of Cambodians, but no group will be more tragic victims than those children forced into the sex industry.

52. The Special Representative commends the public and private statements of both Prime Ministers on this issue. As stated in his 1996 report to the

General Assembly, the Special Representative urges that this concern be translated into energetic action by the relevant authorities by way of serious and effective law enforcement activities, a comprehensive programme of prevention, including an awareness and education campaign, and support to non-governmental efforts to rehabilitate victims. He regrets to note that despite these stated commitments to combat the problem, no progress has been witnessed since his first visit and child prostitution and trafficking in the Kingdom continues to increase alarmingly.

53. The Special Representative welcomes the initiatives and interest demonstrated by local and international non-governmental organizations and encourages the Government and non-governmental organizations to cooperate to combat this scourge. Also essential is the Cambodian National Council for Children (CNCC), a high-level governmental body founded in November 1995 in which non-governmental organizations also participate and which is mandated to work on all aspects of children's rights. The Special Representative urges that the CNCC take a more active role: it has met only once since its formation. This is an issue of great concern to the Special Representative, who will continue to follow it closely.

### C. Rights violated through the use of landmines

54. Millions of landmines continue to lie scattered in Cambodia's rice paddies, fields, forests, mountains, lakes and streams. These devices kill or injure thousands of Cambodians each year in the most indiscriminate manner. Landmines and unexploded ordnance also render large areas of the land unfit for agriculture and development, thereby seriously retarding the economic development of the country. These mines and unexploded ordnance will continue to kill and mutilate human beings and sabotage the economic development of Cambodia for many years to come, adding to the terrible human suffering and its related social and economic consequences, of a country which already has some 40,000 war invalids. An estimated one out of every 243 Cambodians has been disabled by landmines. Their use by any party must be stopped immediately.

55. The Special Representative strongly commends the work of de-mining agencies working in Cambodia, particularly the governmental Cambodia Mine Action Centre (CMAC), the British-based Halo Trust and Mines Advisory Group (MAG), and the Compagnie francaise d'assistance. Mine clearing is a slow and dangerous task which must be done centimetre by centimetre to ensure that land can safely be reclaimed for civilian use.

56. Some de-miners worked in contested zones and are subject to the additional danger of armed conflict. Two MAG de-miners, Christopher Howes, a British national, and his Cambodian assistant, Hourn Hourt, were kidnapped in March 1996 by a group of former Khmer Rouge soldiers in Angkor Chum district in Siem Reap province. Unconfirmed reports suggest that until recently they had been held at the northern Khmer Rouge base at Anlong Veng, though this has been denied by Khmer Rouge radio. In December 1996, senior military officials reported that the two had escaped and were heading towards government controlled territory in central Kompong Thom province. However, as of the time of writing of this report, the two had not appeared. The Special

Representative strongly condemns this cowardly kidnapping of humanitarian workers and reiterates his demand that these men be released immediately, without conditions.

57. King Sihanouk, the First Prime Minister, the Second Prime Minister, the President of the National Assembly, co-Defence Minister Tea Banh, and many other senior political and military leaders in Cambodia have endorsed a ban in Cambodia on the use, stockpiling and manufacture of anti-personnel landmines. The Special Representative welcomes these statements and highly commends the efforts of His Majesty the King and the Government to eliminate anti-personnel landmines. He also welcomes and warmly encourages the efforts currently under way to legislate a ban.

58. The draft law on the banning of anti-personnel landmines has been submitted to the Council of Ministers for approval and then consideration by the National Assembly. The draft was prepared in mid-1995 by H.E. Ieng Mouly, the Director of CMAC and the Minister of Information, with the technical assistance of the Centre for Human Rights of the United Nations, relevant national and international NGOs, the International Committee of the Red Cross (ICRC) and United Nations agencies. The draft law provides, inter alia, for the banning of the use and manufacture of anti-personnel landmines, the destruction of existing stockpiles over a transitional period, and criminal penalties for violations. It also provides for monitoring by de-mining NGOs and others of the implementation of the law and facilitates international assistance.

59. The Special Representative is concerned at the slow pace of consideration of this draft law, adoption and implementation of which should be a top priority of the Government and National Assembly to ensure that no landmines will ever be laid again in Cambodia. Its passage and implementation will allow de-mining efforts to begin to make significant progress towards the goal of clearing all of Cambodia's land. The Special Representative reminds the Government that the adoption of this law will also strengthen the Government's stated foreign policy objective of opposition to the manufacture, export and use of mines and will establish Cambodia as a leading nation in the international campaign for a total ban on landmines. The adoption of this law will also facilitate the mobilization of funding from the international community for the enormous and expensive task of de-mining.

60. The Special Representative strongly supports the international campaign for a total ban on landmines and encourages the international community to continue to provide financial and technical support for mine-clearing operations. The Special Representative particularly commends the major donors to this effort, including Australia, Denmark, France, Japan, Sweden, the United Kingdom and the United States.

### D. Rule of law, independence of the judiciary and administration of justice

61. The rule of law, the independence of the judiciary and the administration of justice are of continuing concern to the Special

Representative. Problems in all of these areas have led to the de facto and de jure problem of impunity, or inability to prosecute violators of human rights.

62. The continued absence of basic institutions called for by the Constitution remains a serious problem. The Constitutional Council, the body designated by the Constitution to determine the constitutionality of legislation and to decide contested cases in the election of members of the National Assembly, has still not been formed. The members are to be appointed by the King, the National Assembly and the Supreme Council of Magistracy. Only the King has submitted a list of members. No organic law specifying the organization and operation of the Constitutional Council has been drafted. The lack of a Constitutional Council means that there is no legal forum to determine the constitutionality of various legislative enactments, such as the recently passed Law on the Control of Drugs, or the Press Law. This seriously undermines both the reality and the perception of the rule of law in Cambodia.

63. Under the Constitution, the Supreme Council of Magistracy has the responsibility to appoint, transfer and discipline judges and prosecutors. It also has the legal responsibility to review all draft legislation related to judicial affairs. While a law was passed in 1994 to establish the Supreme Council of Magistracy, political disagreements between the two main parties over the membership of this body have prevented it from meeting. All government officials, members of the National Assembly and representatives of non-governmental organizations whom the Special Representative met agreed with him that an independent Supreme Council of Magistracy should start functioning at the earliest possible date. Without the Supreme Council of Magistracy, real reform of the judiciary will be stalled and the problem of too few judges and prosecutors cannot be addressed. Finally, as the Supreme Council of Magistracy has to appoint one third of the members of the Constitutional Council, if the Supreme Council of Magistracy is not convened it will be impossible for the Constitutional Council to be formed.

64. Another important building block in the establishment of an effective administration of justice is the constitutionally required law on the status and functioning of the judiciary. This law, which has not been drafted, would address issues such as the role of trial judges, investigating judges, prosecutors and clerks, the training of judges, membership in political parties, conflicts of interest, and ranks and salaries. Without such a law the legal basis for the entire Cambodian judiciary is unclear.

65. The Special Representative again commends the open and active cooperation of the Ministry of Justice with international efforts to train and increase the capacity of the judiciary. Through the judicial mentor programme of the Centre for Human Rights and the Cambodian Court Training Project of the International Human Rights Law Group, judges, prosecutors, clerks, police, prison authorities, military police and local officials are receiving training and advice about human rights, domestic law and the role of the judiciary. The Special Representative encourages continued donor support for these valuable long-term programmes of institution building, as well as for the physical reconstruction of Cambodia's dilapidated court buildings.

66. Article 109 of the Constitution states that the judiciary is independent. However, the Special Representative is concerned at reports that on 2 and 3 December 1996 most, if not all, judges and prosecutors in Cambodia were invited to attend nationwide partisan political celebrations staged by the Cambodian People's Party to mark the eighteenth anniversary of the founding of the National United Front for the Salvation of Kampuchea (NUFSK). Many judges missed work to attend such meetings, which took place at CPP offices around the country. Attendance at such meetings, particularly during work hours, further reinforces the impression of a partisan judiciary which has not yet obtained full independence from party or government.

67. Also of concern is continued interference from members of the executive branch, particularly from members of provincial government and in political cases. The principle of the independence of the judiciary requires that no person, no matter his or her position, should communicate with the judiciary about a case which is before the court. This principle is still not widely respected by local government, military or police officials. Though there is a growing awareness of this principle among judges and prosecutors, there are often subtle and overt pressures or threats against members of the judiciary if they do not discuss cases and resolve them in a manner satisfactory to their interlocutor.

68. One of the most vivid examples of this problem was the dispatching on 16 August by the Fifth Military Region in Battambang of armed soldiers to oppose the eviction from a house ordered by the provincial court. The house belonged to a Battambang resident who had been sentenced to four years' imprisonment after she had failed to repay debts contracted with four parties. The court decided to auction the house to pay compensation to the four parties and ordered the eviction of its occupier. The latter, a Fifth Military Region soldier, and a brother-in-law of the owner, claimed ownership of the house. This claim was rejected by the court, but accepted by the Court of Appeal. The soldiers opposed the eviction and claimed that they were under orders to arrest the president of the court if necessary. This was not the first such attack on the court in Battambang. In 1994 the court building was sprayed with gunfire after the court ordered the arrest of a soldier involved in the plundering and smuggling of antiquities at Angkor Wat. The unit responsible for the attack is widely known, but no action has been taken to arrest those involved.

69. Other attacks have occurred on the courts in Kompong Som, Svay Rieng, Stung Treng and Kampot provinces. On 28 December 1995, a mixed group of armed policemen from Phnom Penh Municipality and the National Gendarmerie, obstructed for the third consecutive time the execution by the Phnom Penh Prosecutor of a court order of eviction. It was only after the Minister of Justice protested in writing to the co-Prime Ministers, the co-Defence Ministers and the Chief-of-staff of the Army that the court was eventually allowed to carry out its duties. On the same day, a group of 200 villagers from Kompong Trach district, visibly encouraged by the district authorities, forcibly entered the provincial court in Kampot, ransacked it, destroying property and burning numerous court case files and documents. This attack was carried out in broad daylight and under the eyes of the provincial police, who did not intervene to prevent it.

70. No prosecutions have taken place in any of these cases of attacks, though in all cases the perpetrators are known to the authorities. Judges and prosecutors in several provinces continue to report threats to their physical security and admit that the environment in which they work affects their decision-making and hence their independence.

71. The most crucial challenge in the promotion and protection of human rights in Cambodia is impunity. Impunity means that those persons who commit human rights violations - particularly members of the military, police and other armed forces - are not arrested or prosecuted even when their culpability is well known to the authorities and the general public. This situation causes a grave loss of faith in the system of the administration of justice, and undermines the moral authority of the courts and the Government.

72. The Cambodia Office of the Centre for Human Rights has documented numerous instances of serious human rights violations since the formation of the Royal Government - extrajudicial executions, killings, torture, illegal arrests and detention for extortion - committed by military or police personnel or powerful individuals in the Government, or enjoying high-level protection. In the very large majority of cases, none of the perpetrators, even when they are known, have been brought to justice or otherwise sanctioned. None of the nine serious instances of acts of violence against journalists have been seriously investigated to identify perpetrators and bring them to justice (see sect. II.G of the present report). The problem of official impunity is unfortunately only one aspect of the wider problem of general impunity which prevails in Cambodia, and which is to a large extent due to the structural weaknesses of the judiciary described in this and previous reports by the Special Representative. The share of the national budget devoted to justice is 0.29 per cent of the total budget. Unless these weaknesses are seriously addressed by the Royal Government, and justice becomes one of its top priorities, numerous crimes - including those committed by government officials - will continue to go unpunished, with the effect that the whole system of justice will continue to be held in poor esteem by the public.

73. A serious case of cold-blooded murder with possible political motivation, which has not been clarified, occurred on 19 November 1996. Kaev Samouth, a 39-year-old deputy director of the Economic Crimes Department of the Ministry of the Interior, was assassinated in broad daylight by an unidentified gunman who was waiting for him outside a restaurant in central Phnom Penh. Kaev Samouth was a brother-in-law of the Second Prime Minister, Hun Sen. He was not known to be involved in politics. Formerly a senior commander of the Second Prime Minister's bodyguard unit, Kaev Samouth had been appointed to the Ministry of the Interior following the formation of the Royal Government. His murder coincided in time with one of the most serious episodes of tension between the two main political parties of the coalition Government since March 1996, the Cambodian People's Party and the FUNCINPEC party. On the day of the murder, the Cambodia Office of the Centre for Human Rights sent a letter of condolence to the spouse of the victim and expressed the hope that the murderer would be found and brought to justice. As in previous similar cases, it began investigating the case. The Special

Representative also made a public statement offering condolences to the family of the victim and called on the Royal Government to do its utmost to investigate that crime and bring its perpetrators to justice.

74. A thorough discussion of the issue of impunity is also desirable in Cambodia against the background of the gross human rights violations committed in the 1970s. It may in the short run be politically inconvenient to insist on thorough investigations into what happened and who was responsible, but the Special Representative believes such efforts are necessary in order to demonstrate that crimes of that horrendous character can never be accepted. It would undermine the sense of justice in society if the Khmer Rouge killings and other atrocities were amnestied in a manner that pre-empted and hindered a judicial process. The partial amnesty granted in September 1996 through a royal decree should not exclude the possibility of establishing a truth commission to clarify facts and assign responsibility.

75. Unfortunately, a form of impunity is codified in Cambodian law. Article 51 of the 1994 Law on Civil Servants provides that, except in cases of flagrante delicto, no civil servant may be arrested or prosecuted for any crime unless the Government or the concerned Minister consents in advance. In the majority of cases in which such requests have been made, the court has received no answer or its request has been denied. In many other cases the delays which result from such a procedure have meant that the perpetrator has had time to escape or receive the protection of a powerful patron. While members of the military are not civil servants, in November 1995 the Council of Ministers issued a statement that courts attempting to prosecute members of the armed forces must follow the same procedure as in article 51.

76. Article 51 clearly contravenes the basic principle of equality of all persons under the law and creates a climate of lawlessness in which persons in the police or military are not held accountable for their acts, even when such acts include murder, rape, torture, robbery or arson. Whether intended to do so or not, article 51 effectively shields human rights violators within the Government, from prosecution. This is a serious derogation from the rule of law and may encourage police and military officials to continue to commit abuses in the knowledge that they are not likely to be prosecuted.

77. The Special Representative appreciates the concern expressed at the highest levels of government about this issue. During his second mission, both the First Prime Minister and the Minister of Justice endorsed the concept of repealing article 51 and allowing the courts to proceed with prosecutions of civil servants and members of the military alleged to have committed crimes. During the Special Representative's first mission, the Second Prime Minister stated that he supported the repeal of article 51. The Chairman of the National Assembly Commission on Human Rights and Reception of Complaints also stated his support for repeal, which has moreover been requested by many judges and prosecutors. The Special Representative greatly appreciates this broad endorsement of the equality of all persons before the law and urges that article 51 be repealed by the National Assembly without delay.

78. The Special Representative again commends the dedication and excellent work of Cambodian "defenders" and lawyers representing criminal defendants and

poor persons and encourages donors to support their efforts, as well as the complementary new programme of the Cambodian Bar Association in this area. Without such organizations, virtually all accused persons would have no access to defence counsel and the fundamental right to a fair trial would only exist on paper.

79. The Special Representative is concerned that no progress has been made on creating a legal framework for the establishment and operation of prisons. The lack of such legislation has led to confusion about the rights of prisoners, the responsibilities of the authorities and the possibility of regular monitoring of conditions by local NGOs.

80. The health conditions of prisoners has also sharply deteriorated, as the provision of the monthly budget to prisons for food and other essentials for the maintenance of prisoners has repeatedly been delayed. This has led to severe malnutrition, including serious cases of beriberi, and other diseases. Another result is that local prison directors are forced to borrow funds at exorbitant rates of interest to provide even a little food to prisoners. This creates a vicious cycle of debt and leaves less money available to provide a proper diet to prisoners. United Nations organizations and local non-governmental organizations have responded to the crisis by providing emergency assistance. However, the provision of adequate food and health care to prisoners is a state responsibility. Those convicted of crimes are sentenced to the deprivation of liberty, not to hunger and malnutrition. The Special Representative urges the Ministry of the Interior to take immediate steps to solve the administrative problems which have created this situation.

## E. Protection from torture

81. During his second mission, the Special Representative emphasized the issue of torture and other cruel, inhuman or degrading treatment or punishment. Torture is prohibited under the Cambodian Constitution and criminal law. Article 38 of the Constitution provides that "the law guarantees there shall be no physical abuse against any individual" and that "coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited". The article further provides that confessions extracted under torture cannot be admissible as proof of guilt and holds perpetrators of torture punishable under the law. The same prohibition exists in the Cambodian Criminal Law (art. 12). Cambodia is also a party to the Convention against Torture.

82. In meetings with human rights NGOs, defenders organizations, defence lawyers, judges, prosecutors and officials from the Ministry of the Interior and the Ministry of Justice, the Special Representative learned that torture and ill-treatment of detainees in police, gendarmerie and military custody is a serious problem. Although he found no evidence that torture is the result of official policy, the central authorities have taken inadequate measures to guard against such practices, which generally take place as the result of local initiatives by police, gendarmerie or military interrogators who are either ill trained or deliberately abuse their power. The Special Representative welcomes statements against torture by the Minister of Justice and Minister of the Interior and the beginning of efforts to discourage law enforcement personnel from using torture to extract confessions or impose

punishment. He also appreciates the request of the co-Ministers of the Interior that the Cambodia office of the Centre for Human Rights bring to their attention reliable information relating to human rights violations committed by members of the police.

83. The Director of the National Police, General Hok Lundi, told the Special Representative that torture by police officers in police stations continues to be a problem. He attributed it to local initiatives by police officers who lack proper training or disobey orders. He cited two cases in Koh Kong and Kompong Thom of sanctions against police officers found to have tortured detainees. In this respect, General Lundi invited the United Nations to assist the Ministry of the Interior to establish a police academy to provide professional training to the country's 60,000 police officers. The Special Representative took note of the request and stated that he would encourage international support for such an initiative.

84. Under Cambodian law, the National Police and the Royal Gendarmerie are the only law-enforcement agencies with legal authority to arrest and temporarily detain suspects. The Royal Cambodian Armed Forces are prohibited from detaining individuals and administrating detention facilities. However, documented cases of torture or ill-treatment of individuals in military custody, particularly in areas close to the front-line, have been reported.

85. Typically, torture tends to occur in the custody of the detaining authorities immediately after arrest. Coercion against detainees is aimed at forcing them to confess their alleged offence, or to punish them for it, or to extort money. Torture most commonly involves severe beatings, which may include slappings, kickings, punchings, but also beatings with a wooden stick or truncheon. Victims are sometimes beaten until they fall unconscious. In several cases, electricity has been used, either with stripped electric wire or electric truncheons. Near-drowning and near-strangulation with "krammar" (a Cambodian cloth scarf) have also been reported. Threats of execution are very common. These methods are often combined with temporary isolation and deprivation of water and food.

86. In several documented cases, victims have been beaten up or otherwise tortured to death. This was the case of Mr. Liv Peng Harn in Kompong Cham (13 January 1996), of Mr. Ok Phea in Ta Khmau (9 March 1996), of Mr. Um Hann in Battambang (9 May 1996) and Mr. Thong Sophara in Siem Reap (21 May 1996). In several cases women and children have been subjected to torture or ill-treatment by police or military interrogators: 15-year-old Ly Kim Hong was beaten by police interrogators together with his mother in Kompong Chhnang (20 May 1995) and a 13-year-old girl, Ouk Chreb, was tortured with an electric truncheon by officers of the gendarmerie and the regular army in Kompong Thom (September 1995). The Special Representative has requested the Cambodia Office of the Centre for Human Rights to compile verified instances of torture and ill-treatment so as to be able to assess more precisely the nature and extent of the problem.

87. Liv Peng Harn was tortured to death by district police officers in Krauch Chhmar district, Kompong Cham province. Following complaints of police ill-treatment by his wife and human rights organizations, the Minister of Justice ordered the exhumation of the victim's body for autopsy. Despite

initial strong resistance by the police and other provincial authorities, the Minister of Justice courageously insisted. The co-Ministers of the Interior eventually agreed and the body was publicly exhumed in August 1996. The exhumation took place in the presence of officials of the Ministries of the Interior and of Justice, district and provincial authorities, the provincial tribunal, human rights organizations and the press. The autopsy revealed that the victim, who, according to the official police report, had committed suicide by hanging, was found with six broken ribs on the left side. This exhumation of a victim of police torture by the judicial authorities to conduct an autopsy is an unprecedented development in Cambodia. It constitutes an important step in the efforts by the Ministry of Justice to establish the authority of the judiciary over the police and should be used as an example to improve the protection of persons in police custody. Such determined action by the Ministry of Justice is an important signal to police and other interrogators that acts of violence against detainees will be sanctioned. The next step in this particular case should be the prosecution of the responsible district police officers.

88. On 26 November 1995, the Ministry of the Interior issued circular No. 006 relating to the "Discipline of the National Police Forces". It specifies the rules of conduct which police officers must observe in the conduct of their duties and the penalties in the case of misbehaviour. Penalties for torture include "demotion, expulsion from the unit, removal from function, or expulsion from the police" and judicial prosecution if death results from torture. This circular contains very important guarantees for the protection of the basic rights of detainees. It seems however, that its implementation and respect by police forces leaves much to be desired. (No police, gendarmerie or military officers responsible for torture, including in the cases described above, are known to have been sanctioned or brought to justice.)

89. The legal prohibition of torture is translated into very few effective guarantees to protect detainees against abusive practices by the detaining authorities. According to Cambodian law, no arrest can be made by the police without a court order except in cases of flagrante delicto or in the presence of compelling evidence. In the latter two cases, the police must produce the suspect before the prosecutor no later than 48 hours after arrest, together with the initial evidence collected. During that period of custodial detention it is the police who are responsible for investigating the case and collecting the evidence on the basis of which the prosecutor will decide on the case.

90. In practice, most arrests are conducted by the police or the gendarmerie without warrants and in numerous cases prosecutors are either not informed, or informed at a very late stage of the detention, usually long after the maximum delay of 48 hours set by the law. During these periods, of varying length, of unchecked illegal detention, arrestees are at the mercy of those detaining them. Such a context of uncontrolled detention facilitates the occurrence of abuse. Experience shows that it is during this period that most cases of reported torture or ill-treatment take place, as no authority or outside control other than the police monitors the detention and investigation process. Neither prosecutors and judges, nor lawyers or defenders have access to detainees during this initial period. Prosecutors often complain that

numerous cases of arrest and detention are never notified to them. When they are, they often involve cases which the police have not managed to "resolve" by themselves, that is, usually, through coercion to extort benefits.

91. Article 10 of the Cambodian Criminal Law states that no one may be detained for more than 48 hours without access to the assistance of counsel, an attorney or other authorized representative.

92. The 48-hour period of custodial detention is thus often understood by police officers as giving them exclusive power over the detainee during that time in order to carry out their investigation. They thus tend to deny access by defenders or defence lawyers, and even relatives, to persons in their custody. In addition, in cases of illegal detention of persons for the purpose of extracting information, confessions or wealth, the detention is unlikely to be acknowledged by the detaining authorities. There is also no possibility to challenge the legality of the arrest and detention during the first 48 hours as remedies such as habeas corpus do not exist in Cambodian law.

93. There seems to be a widespread understanding among police investigators that they have 48 hours following arrest to gather all the evidence to be presented in court. In that short period, they often resort to coercion, which they see as the most expedient or the only means at their disposal to obtain confessions. Several police officers have admitted that this was the best way as otherwise suspects would not confess and they would be obliged to release them. Other police officers have said that they had to obtain confessions by force for fear of being criticized for having carried out a wrongful arrest, or an arrest without evidence. They thus felt compelled to produce evidence, no matter what.

94. Fear of retaliation often discourages victims, defenders and even judges from addressing the issue in court. Beatings in police custody are so frequent that they are almost considered "normal" by many victims, who thus do not report or complain about them. Fear of retaliation by the detaining authorities is an aggravating factor. Fear that complaining about torture may aggravate their sentence has also discouraged victims, and often their defenders, from raising the issue in court. This has led defendants to admit guilt for offences they have not committed to avoid running the risk of further ill-treatment. Often, when acts of torture risk being exposed, their perpetrators seek to buy off the silence of the victims or their relatives. Another reason for the reluctance of victims to complain about their ill-treatment is that they often do not expect, or have given up hope, of obtaining redress through existing judicial procedures. This is one aspect of the pervasive lack of confidence among the public in the ability of the justice system to protect them effectively from such acts.

95. Defenders have acknowledged the difficulties they face when raising the issue of forced confession with judges. They have complained that their requests that such confessions be dismissed have received no or a negative response. They have also expressed fears that making these requests and pressing for a response may "jeopardize their relation with the court". They

have also experienced difficulties in documenting instances of torture, thus facing the risk of the rejection by the court of the torture complaint of their clients.

96. Torture is often difficult to document. In the absence of remaining physical evidence on the body of the victim, there is usually no evidence left other than the victim's account of his or her ordeal. In the case of sexual violence, and in particular in rape cases, unless a medical examination is conducted quickly thereafter, it is often difficult to establish that violence has occurred. These difficulties are aggravated when court officials are sexually prejudiced and do not consider rape as a serious offence or are reluctant to recognize that sexual violence has occurred, in order to avoid implicating powerful individuals. They thus tend to demand from the victim or his or her defender a degree of evidence which is often impossible to establish. In cases involving powerful or protected persons, prosecutors have obtained forged medical certificates or reports from medical doctors. Independent medical doctors have also sometimes been reluctant to establish medical certificates implicating these powerful persons, out of fear for their safety. As a result, often the only remaining evidence is testimonial. Establishing facts becomes a delicate task which requires detailed and in-depth interview with the victim, on a subject which is often difficult to speak about. Defenders or lawyers have admitted being ill-prepared for that task, which renders them vulnerable to the court's questioning the validity of the evidence they produce in support of their request to dismiss a forced confession or establish that a rape has been committed. Cases of rape or sexual assault are frequent, though most of them never reach the courts. This is because the victim, already traumatized by the violence she was subjected to, is often ashamed and thus reluctant to face the additional ordeal of public exposure of the violation in court. Other victims are afraid to lodge a complaint for fear of retaliation or because they or their parents have been pressured by the perpetrators to accept financial compensation not to complain.

97. Prosecutors and investigating judges mostly rely on the investigations undertaken by the police to file charges and conduct trials. They thus heavily, and too often uncritically, rely on police findings. Although it has improved in the past three years, the relationship between the courts and the police has traditionally be uneasy. As a result, judges are often reluctant to dismiss a police confession deemed to have been extracted under torture, and release a suspect, out of fear of alienating the little cooperation they receive from the police. Judges have also been reluctant to implicate responsible police interrogators out of concern for their own safety.

98. In a public trial in Phnom Penh on 6 August 1996 involving nine suspected political offenders arrested in December 1995 in connection with alleged Khmer Rouge activity, the prosecutor was witnessed intimidating one of the defendants who complained of having been forced to confess under police duress. The prosecutor shouted that "court hearings were not the place for complaints about police misconduct".

99. In several recent cases, however, prosecutors or judges have courageously dismissed evidence shown to have been produced under torture by police or military interrogators. In such cases, the outcome has usually been

that the accused have been released. No responsible police officers are known to have been prosecuted. In a recent example, the provincial tribunal of Battambang province dismissed the forced confession of a suspected political offender and ordered his release.

100. As in any other criminal case, prosecutors usually tend to wait for complaints of torture to be received by them from defendants or defenders before taking action, if any, instead of exercising public action whenever an allegation of torture is brought to their attention. The sensitivity and awareness of prosecutors and judges to the issue of torture would certainly benefit greatly from adequate information and training in this regard. It is indeed apparent that, in most cases, they do not have a precise idea of what constitutes torture.

101. This was also the case, up to recently, among defenders and lawyers, who acknowledged that the issue of torture had not been properly understood and therefore addressed by them. As a result, many cases of torture and ill-treatment went unreported. In recent months, however, through training seminars, awareness of the problem has increased. The issue has begun to be documented more systematically. Defenders and lawyers have also courageously started to address the issue of forced confession before the courts, despite the frequent reluctance of court judges to accept their complaints and act upon them.

102. The Special Representative understands and acknowledges all these difficulties, and in particular those encountered by the judges in prosecuting powerful perpetrators. However, he believes that close cooperation between judges, lawyers and defenders to address the issue of torture and forced confessions will bring about an improvement in the protection of persons in custodial detention. Addressing these issues openly and repeatedly in court will increase public and official awareness of the issue and promote conditions for the better protection of detained individuals. Decisions by judges to reject confessions made under duress would send a clear signal that the use of force to get confessions is not acceptable and is subject to criminal prosecution. The general reliance of prosecutors and investigating judges on investigations undertaken by the police is very inappropriate, especially in cases involving forced confessions by police investigators. In such cases, judges should carry out their own independent investigation to ensure that the defendant is not victimized a second time.

103. The lack of detailed provisions relating to the punishment of acts of torture under current penal law, the absence of a law on evidence, the weaknesses of the judiciary and the paucity of material and human resources available to the courts, the pervasive fear of prosecuting powerful or protected offenders, the lack of mechanisms within the police force for superior officers to control the activities of their subordinates and the inability of courts to prosecute because of a system of institutionalized impunity due to the existence of article 51 of the Law on the Statute of Civil Servants, constitute so many obstacles to the prosecution of perpetrators of acts of torture. Protected by these obstacles, perpetrators will continue to abuse their powers against individuals in their custody, confident that they

are immune from punishment. Police and other interrogators have often boasted in front of their victims that they could kill them and nothing would happen to them.

104. The Special Representative encourages the Ministry of Justice to ensure that the future codes of criminal law and criminal procedure currently being drafted provide a clear definition of what constitutes torture, preferably based on the definition contained in article 1 of the Convention against Torture; that they make torture a criminal offence; and that they define appropriate judicial penalties for the commission of torture.

105. Until these codes are adopted, instructions should be issued to ensure better protection of persons under detention. In particular, defenders and defence lawyers should be authorized to have access to the person detained immediately after arrest, and to be present during interrogation. Access to a medical doctor, if necessary, should also be guaranteed. Prisoners should be fully informed of their rights upon arrest. This could be done orally by the arresting authorities and/or by displaying an advertisement of the rights of detainees in all police stations. The Special Representative strongly encourages the Ministries of Justice and the Interior, and the National Police, to agree on and issue clear instructions to police officers throughout the country to implement these safeguards.

106. Information and training about the problem of torture need to be further developed for all those involved in the administration of justice, be they prosecutors, judges, police officers, gendarmes, clerks, lawyers or defenders. Human rights workers and activists should also be trained in this respect. The Special Representative takes note of and endorses the request by the Director of the National Police for international assistance in establishing a police academy to provide adequate professional training to the police force in Cambodia, and has requested the Cambodia Office of the Centre for Human Rights to explore the project with the National Police. Meanwhile, human rights training programmes for the police by human rights organizations should be further encouraged, financially supported and developed, as they continue to be the only source of professional training offered to policemen in Cambodia.

107. The Special Representative wishes to commend the Royal Government, and particularly the admirable efforts of the Inter-Ministerial Sub-Committee on the Convention against Torture in preparing its report on the implementation of the Convention. He is aware of, and fully acknowledges, the difficulties encountered by the Sub-Committee in preparing the report, and welcomes its success in gradually raising, through patient efforts, awareness of the issue within the Government. The Sub-Committee has become one of the most active centres within the Government of awareness, knowledge and information about the issue of torture. It organized a seminar on the Convention in March 1996 aimed at gathering information on the current state of knowledge of the problem of torture in the country. Chaired by the Minister of Justice, it was attended by many government officials from various Ministries, including those of the Interior and of Justice, judges, prosecutors, lawyers, defenders, human rights NGOs and medical doctors. The seminar contributed to creating and spreading awareness of this very sensitive issue both within the Government and outside it.

108. The Special Representative was similarly impressed by the activity deployed in this field by human rights NGOs and defender organizations to document the issue, increase public and official awareness, and look for ways to bring about better protection of detainees in police and other custody. He encourages the Sub-Committee to continue its efforts to document the issue and disseminate information on the obligations of Cambodia under the Convention, in particular at the provincial level. He also warmly encourages strengthening of the cooperation between the Inter-Ministerial Sub-Committee and relevant human rights NGOs in documenting and addressing the problem of torture. He suggested to the Sub-Committee that it prepare a memorandum to the Government drawing its attention to the problem and recommending appropriate measures to ensure the prevention of torture.

109. The issue of torture will be the topic of ongoing consultations by the Special Representative, in order to improve his own understanding of the matter and explore with the Government ways to prevent its occurrence.

## F. Political Rights and Preparation of Elections

110. Both the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict signed in Paris on 23 October 1991 and the Cambodian Constitution establish that the political regime of Cambodia is one of liberal, pluralistic democracy with periodic elections. The Constitution requires national elections every five years, except in "times of war or other special circumstances when elections cannot be held". The administration and electoral process shall be determined by law. Article 42 of the Constitution also guarantees the "right to form associations and political parties" and that "these rights shall be specified in law".

111. The General Assembly and the Commission on Human Rights of the United Nations have repeatedly urged the Government to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, to stand for election, to take part freely in a representative government and to enjoy freedom of expression. All the political parties have publicly committed themselves to these goals.

112. The constitutionally required national election is scheduled to be held in 1998. At the time of writing of this report, the draft national election law had not been completed and no decision had been made about the nature of the electoral system, i.e., majoritarian, proportional or a mixed system.

113. During his second mission, the Special Representative again raised issues relating to the preparation of the elections, in particular the need for a legal framework which guarantees free and fair elections and for effective measures to protect freedom of expression. In addition to the respective election laws, a law on political parties is urgently needed to guarantee the legal status and operations of all parties, including opposition parties. The Ministry of the Interior has finished drafting the law with the advice of the Cambodia Office of the Centre for Human Rights, and the co-Ministers of the Interior publicly stated their intention to submit the draft to the National Assembly for adoption before the end of 1996.

114. The Special Representative welcomes the statement of the First Prime Minister on 11 December 1996 that he will support a liberal law on political parties which gives full rights to all parties to participate in the forthcoming elections. A similar statement was made by the Second Prime Minister during the Special Representative's first mission in July 1996. The Special Representative also welcomes the public statements of the co-Prime Ministers that the Khmer Nation Party, the opposition party led by former Finance Minister and member of the National Assembly, Mr. Sam Rainsy, is a legal party. The Special Representative urges the Government to register formally the Khmer Nation Party and to instruct all armed forces and other government personnel that all registered parties have the right to open offices and conduct political activities in all parts of Cambodia. This may contribute to an atmosphere conducive to genuine multi-party elections.

115. Also necessary is a law on the constitutional council, which is given responsibility under the Constitution for resolving disputes about the election of members of the National Assembly. The lack of a constitutional council at the time of the national elections could result in severe difficulties, as without a functioning constitutional council there would be no legal mechanism for resolving problems of disputed seats.

116. The Special Representative is pleased to learn that a draft law on the military has been submitted to the National Assembly which states that military personnel "shall be neutral in their functions and work activities ... any political activities shall be prohibited". This is a welcome development, as it is essential that all military forces remain neutral during the election period. The police, civil servants and the judiciary should also be excluded from partisan political activities in order to provide the proper atmosphere for free and fair elections.

117. In August 1996 the United Nations Assistant Secretary-General, Mr. Alvaro de Soto, visited Cambodia to report to the Secretary-General on preparations for the forthcoming elections. Mr. de Soto emphasized the interest of the Secretary-General and the international community in free and fair elections in Cambodia, and the need for enhanced efforts in the areas of law drafting and administrative preparations.

118. Administrative preparations for the elections continue to move slowly. The Special Representative is concerned that if proper administrative measures are not put into place in the near future, the conduct of genuinely free and fair elections may not be possible. The staging of nationwide elections is an enormous administrative task for any Government. As these will be the first elections organized by a Cambodian Government for many years, the extent of the task should not be underestimated.

119. The Special Representative recommends that the Government and National Assembly consider the establishment of a permanent and independent electoral commission which would be given responsibility for the conduct of all future elections. Such a commission could have responsibility for registration of voters, voter education, supervision of polling stations, counting of votes, announcement of results and general enforcement of the electoral law. It would be a very important ingredient for the creation of a neutral political environment and acceptance by all parties of the results of the election. As stated in his previous report, the Special Representative believes that the

speedy creation of an independent electoral commission would send an unambiguous signal to the people of Cambodia that the Government of Cambodia is committed to free and fair elections.

120. The Special Representative commends the efforts of Cambodian non-governmental organizations and private citizens to play an active role in voter education, election monitoring and other election support activities. The two main groups, COMFREL (Committee for Free and Fair Elections) and COFFEL (Coalition for Free and Fair Elections) are composed of organizations and individuals with a great deal of experience from their participation in the 1993 elections conducted by the United Nations Transitional Authority in Cambodia (UNTAC). Such outside poll watching and electoral support groups can play a significant role in ensuring a free and fair electoral process.

121. In August 1996 a voluminous report entitled "Planning for local and National Assembly elections" was submitted to the Government by three international election experts who had previously worked in Cambodia for UNTAC. The report covered virtually every legal and administrative aspect of the elections, such as determination of constituency boundaries, computer systems, training of electoral staff, voter education, registration of political parties, voter registration, planning for the polling, security arrangements, determination of results, dispute resolution and a budget. At the time of the writing of this report, the Government had made no official response. The lack of response has limited the speed and amount of electoral assistance which donor countries are willing and able to provide.

## G. Freedom of expression

122. During the election campaign, the most important means of communicating with voters will be through the electronic media, and most importantly through radio. However, radio and television frequencies are currently only operated by the Government, CPP, FUNCINPEC, the Ministry of Defence, or private bodies related to these institutions, and non-political private companies. Applications for broadcasting licences by the Buddish Liberal Democratic Party (BLDP) and KNP have been denied, as have applications made in their private capacities by the leaders of these parties. This creates the impression of a double standard, in which non-governmental voices are not allowed access to radio and television waves. Equal and fair access to the electronic media under a non-discriminatory regulatory regime is essential to the full realization of the freedom of expression. The risk for the Government is that if such access is not ensured, many observers of the electoral process may not be able to certify the elections as free and fair.

123. In October 1996 the Ministry of Information prepared a draft sub-decree on the Press Law. During the debate on the Press Law members of the National Assembly requested, and the Minister of Information agreed, that such a sub-decree should be prepared to define terms in the Press Law such as "national security", "political stability" and "humiliation of national institutions", which had not previously been defined. The Special Representative appreciates the efforts the Ministry of Information has made to date to discuss the draft sub-decree with local journalists and the Cambodia Office of the Centre for Human Rights, but is concerned that the draft contains many other provisions which would limit freedom of expression. Such

provisions include education, experience and training requirements for editors of newspapers, the need for permission from the local authorities to open an office, the need to show a minimum amount of money in a bank account prior to publication and to produce a certificate of mental health from a doctor. Such provisions are particularly worrisome in the light of the fact that during the debate on the Press Law the National Assembly did not grant such powers to the Government.

124. The Special Representative welcomes the August 1996 royal pardon by King Sihanouk of Hem Vipheak, editor of New Liberty. Mr. Vipheak was convicted of violating article 63 of the Criminal Law relating to defamation and sentenced to one year in prison, to be doubled in the case of non-payment of a fine of approximately $2,000. After the Supreme Court upheld the conviction, Mr. Vipheak was taken to T-3 prison, where he remained for one week until freed by the royal pardon. The Special Representative recommends once again that in future the peaceful expression of political views should not be treated as a criminal matter with the potential for imprisonment. If a publication is false, civil defamation remedies should be employed.

125. The Special Representative is concerned that since the 1993 elections, no cases of violence against journalists have resulted in convictions of the perpetrators. These cases include:

The 18 May 1996 assassination of Thun Bun Ly, editor of the opposition Khmer Ideal newspaper, in broad daylight on a Phnom Penh street by two men on a motorcycle. Bun Ly, who was facing imprisonment for articles published in his newspaper, was also a member of the KNP Steering Committee and its Deputy Director of Administration;

The 8 February 1996 shooting of FUNCINPEC radio announcer Ek Mongkol in broad daylight on a Phnom Penh street by two men on a motorcycle. Mongkol was seriously injured and evacuated to Bangkok, where he recovered from his wounds;

The 23 October 1995 attack against the office of New Liberty on a busy Phnom Penh street in the presence of police officers and dozens of witnesses. Two persons were injured and thousands of dollars worth of equipment was destroyed. Though the perpetrators are known to the authorities and freely admit their responsibility, no one has been arrested;

The 7 September 1995 grenade attack against the home and office of Ngoun Noun, editor of Morning News. Mr. Noun went into temporary exile for his safety and has ceased publishing his newspaper;

The 2 June 1995 attack on the Khmer Conscience newspaper office by a purported group of university students in front of police and other witnesses;

The 8 December 1994 murder of Island of Peace reporter Sao Chan Dara in Kompong Cham province. Though the identity and whereabouts of the murderer is known, and he has since killed at least one other person, he remains free;

The 7 September 1994 murder of Noun Chan, editor of Voice of Khmer Youth on a busy Phnom Penh street in broad daylight;

The still unexplained violent death met by Thou Char Mongkol, the editor of the Intervention newspaper on 10 June 1994;

The grenade attack against the Intervention newspaper office on 24 March 1994 which resulted in injuries to five employees and damage to property.

The Special Representative will continue to monitor developments in all cases of violence against journalists.

126. The fact that many journalists in Cambodia do not act professionally and often publish false, defamatory and even highly inflammatory statements, is no excuse for violent acts against them and their colleagues. As in his previous report, the Special Representative emphasizes that the failure to prosecute those responsible for these attacks has greatly contributed to the climate of impunity and an atmosphere of fear within the journalistic community.

127. In a communication to the Royal Government dated 12 November 1996 with which he enclosed a confidential report describing in detail the above-mentioned cases, the Special Representative noted the lack of proper investigation in those cases leading to the identification, arrest and prosecution of the offenders. He outlined the pattern of impunity illustrated by these cases and expressed his concern that the lack of judicial action to sanction acts of violence against the press was a severe threat to freedom of expression. The Special Representative highly appreciates the positions expressed repeatedly by His Majesty the King, the First Prime Minister and the Second Prime Minister against acts of violence against journalists and expects to see these statements being translated soon into concrete action in favour of the effective protection of all journalists in Cambodia. He renews his previous suggestion concerning the establishment of an independent commission of inquiry to clarify why investigations of these violent attacks have been unsuccessful and what measures can be taken to remedy these apparent failures.

## III. OTHER DEVELOPMENTS

### A. Legal developments

128. The Law on Control of Drugs was passed by the National Assembly in December 1996. The draft was prepared by the Ministry of Justice with the assistance of the United Nations Drug Control Programme. At the urging of the Cambodia Office of the Centre for Human Rights and others, the first draft was amended to take into account civil liberties. The Special Representative appreciates the consideration given by the Ministry of Justice and the National Assembly Commission on Legislation to these concerns and the changes made. However, serious problems remain, including the fact that the law does not distinguish violators on the basis of the amount or value of the drugs involved. Instead, the law prescribes minimum sentences of 10 years for virtually all offences. The law also allows doubling of

sentences on 11 different grounds. Cambodia's dilapidated prisons are already full and, like those in other countries which have passed such harsh laws, will be overflowing if such long sentences are enforced.

129. Two articles of the law appear to allow searches, seizure or confiscation without obtaining a court order. Allowing the police to take these actions without a court order is a deviation from sound principles of criminal procedure in which the courts have authority over searches and seizures and due process is afforded to an individual before legal action is taken against him or her.

130. The law allows telephone monitoring and opening of mail, both of which are explicitly prohibited by article 40 of the Constitution.

131. The Nationality Law was passed in August 1996 by the National Assembly. The law raises a number of concerns. The definition of nationality uses the term "Khmer", instead of "Cambodian", which could result in the exclusion of certain ethnic minorities when the law is applied. The law does not adequately define the term "Khmer", leaving the decision of who is or is not "Khmer" to the interpretation of civil servants or police officers enforcing the law. This is likely to lead to arbitrary and uneven application of the law. A major concern is the provision on naturalization which fails to take into account any period of residence prior to the effective date of the law and requires an additional seven years of residence before it is possible to apply for citizenship. This means that persons living in Cambodia for as much as a generation are treated the same as persons who arrive on the day the law comes into force. The lack of clarity and the harsh provisions relating to naturalization raise the possibility of statelessness for thousands of persons residing in Cambodia and possessing no other nationality. Finally, the passage of the Nationality Law means that the Immigration Law, concerns about which were raised by the Secretary-General, will now come into effect.

### B. A case of military abuse against civilians

132. On 5 December, the Special Representative travelled to the remote village of Krang Kontro, in Kompong Chhnang province, where on 18 September 1996 six children aged 2 to 8 were killed and seven others injured by drunken soldiers who fired a B-40 rocket into a local restaurant shop. Four soldiers were also injured, two of whom reportedly died from their injuries.

133. In the village, the Special Representative visited the scene of the killing and interviewed witnesses of the incident, who recounted that the perpetrators of the killing belonged to a unit of the Special Military Region, based in Amleang, dispatched to the village to protect it from alleged Khmer Rouge intrusions. However, several soldiers had intimidated, robbed and detained, and had sometimes severely beaten up, villagers. A dispute had allegedly broken out between these soldiers and another group of soldiers from the same unit who opposed their abusive conduct. The rocket was apparently fired in the context of that dispute and accidentally killed and injured the 13 children.

134. Following the incident, villagers, including relatives of the children, were forced at gunpoint by the perpetrators to leave the child victims on the ground and to carry the wounded soldiers to their base first. Although they recognized the killing of the children was not intentional, the villagers complained about the abuses they had been subjected to by these soldiers and expressed bitterness and a sense of helplessness at the indifference shown by the provincial and military authorities to their ordeal. In protest at the killing and official inaction, representatives of 30 families from the village travelled to the Kompong Chhnang provincial capital to lodge a complaint with the provincial authorities. The Governor's office reportedly told them that the soldiers would be removed from the area and that justice would be done. No authority visited the village to investigate the case and no action was taken to protect the villagers against further abuse. By mid-November, after Amnesty International appealed to the Government to bring to justice those responsible and take measures to protect the villagers, the soldiers were withdrawn from the village and replaced by district soldiers.

135. After he visited the village, the Special Representative discussed the case with the Second Deputy Governor of Kompong Chhnang and encouraged the provincial authorities to investigate the incident. The Deputy Governor denied any knowledge of the incident and invited the Special Representative to provide information. In Phnom Penh, the Special Representative met with the Deputy Commander of the Special Military Region, who was aware of the case and briefed him on the measures taken to ensure the protection of the villagers and the prosecution of those responsible. The Deputy Commander said that an arrest warrant had been issued against the soldier responsible for the firing, who had since escaped to Battambang province; the commander of the unit in question had been arrested and would be severely punished. At the time of writing the present report, these statements could not be independently confirmed. The Special Representative requested the Cambodia Office to inform him about what effective measures have been taken to bring the perpetrators to justice.

### C. Cases of deportation

136. On 5 December 1996, 19 persons of Vietnamese origin accused of involvement in the People's Action Party (PAP), a United States-based Vietnamese political grouping which advocates democratic reforms in Viet Nam, were deported by the Cambodian authorities and handed over to the Vietnamese police. They were immediately arrested and placed in detention in Ho Chi Minh City. On 6 December, a spokesman for the Vietnamese Ministry of Foreign Affairs confirmed the detention of the 19 and said that they were being investigated under national security legislation. If convicted, they may be sentenced to long prison terms.

137. The 19 deportees were among a group of 28 persons of Vietnamese origin who were arrested in the border town of Poipet on 28 November 1996 as they attempted to cross into Thailand to attend a meeting apparently organized by PAP activists. They were taken to Phnom Penh, where they were detained. Eight of the 28 were able to establish either their Cambodian citizenship or their legal residency in Cambodia. The 19 others were unable to produce

documents concerning their legal status in Cambodia although several of them claimed to have various identity or residency papers. Ten among the 19 had registered applications for asylum with the UNHCR.

138. Cambodia is a State party to the 1951 Convention Relating to the Status of Refugees. Central to the Convention is the fundamental principle of non-refoulement, which prohibits the forcible return of any person to a country where he or she has a well-founded fear of persecution. On 4 December 1996, the day on which the Director of the Cambodia National Police announced that the 19 detaines would be deported the following day to Viet Nam, UNHCR urgently requested the Government to suspend the deportation order to allow sufficient time for its office to determine on a case-by-case basis the status of the 19 under the Convention. The request was strongly and publicly supported by the Special Representative but ignored by the Government of Cambodia. Following the deportations on 5 December, both UNHCR and the Special Representative wrote to the Royal Government to protest about the deportations, to ask for clarifications concerning the legal grounds for that decision, and to request assurances that the eight remaining detainees would be released. To date, no response has been received, but the remaining detainees were freed after written promises requested by the police that they would not engage in further political activity.

139. In his meeting with General Hok Lundi, the Director-General of the National Police, the Special Representative was told that the decision to deport the 19 detainees was made in accordance with Cambodian immigration law and after consultation with the Embassy of Viet Nam. General Lundi stated that the 19 persons were illegal aliens in Cambodia and as such had to be returned to the border. The Special Representative raised the concern expressed by UNHCR that at least eight of them who could be interviewed had applied for political asylum. General Hok Lundi said that the UNHCR request had been received too late and that if it had been taken into account, it could have altered the decision concerning deportation agreed upon with the Vietnamese authorities.

140. The Special Representative stressed that the 19 persons appeared to have been deported for the peaceful expression of their political views. He also emphasized the importance of the principle of non-refoulement for the protection of refugees or asylum seekers and the need for a fair procedure to avoid persons being deported whose rights might be violated in the country to which they were returned. General Hok said that in future cases UNHCR would be associated with the procedure.

## IV. IMPLEMENTATION OF PREVIOUS AND NEW RECOMMENDATIONS

141. At its fifty-second session the Commission on Human Rights requested the Special Representative, in collaboration with the Cambodia office of the Centre for Human Rights, to evaluate the extent of follow-up and implementation of his recommendations, including those submitted earlier by his predecessor.

142. Some recommendations have indeed been followed up by the Government of Cambodia, but a number of them have been implemented only partly or not at all. The Special Representative intends to continue to refer to previous

recommendations during his forthcoming missions to Cambodia and discussions with the decision-makers concerned. There will therefore be a step-by-step evaluation of progress, which will be reported to the Commission on Human Rights and the General Assembly.

143. The Special Representative has recommended that the inter-ministerial committee drafting the reports on the implementation of the international human rights treaties, which Cambodia ratified in 1993, review the recommendations of the Special Representative when assessing human rights situations. The Special Representative is satisfied to report significant progress in the report writing and expects that all six reports will be finalized and approved by the Council of Ministers before the end of 1997.

144. At its fifty-first session, the Commission on Human Rights urged the Government of Cambodia to promote and uphold the effective functioning of multiparty democracy. Moves have been made to prepare for both the communal and national elections. There are, however, delays in the establishment of the legal framework. At the time of writing this report, the draft election laws and the draft law on political parties had not yet been submitted to the National Assembly. The status of the opposition Khmer Nation Party is still not clear. Though both Prime Ministers have stated that the party is not illegal, it has not been formally registered and its members have suffered serious intimidation in some of the provinces.

145. In a joint comment on the report of the Special Representative to the General Assembly the two Prime Ministers pledged that steps would be taken to ensure that the elections would be free and fair, that military personnel would be barred from political activities and that non-governmental groups and international observers would be welcome to monitor the elections. The Special Representative welcomed that statement and recommended the establishment of an independent electoral commission which would be responsible for the supervision of the elections in a manner which would guarantee their freedom and fairness. He appeals to the international community to respond positively to any request for assistance to such a structure.

146. The Special Representative has expressed deep concern about the atrocities committed by the Khmer Rouge, including killings, the laying of mines and the taking of hostages. Such criminal acts have continued to be committed by those Khmer Rouge troops not belonging to those which agreed to cease their warfare against the government army.

147. As is made clear in the present report, the administration of justice is a major concern. Legal, budgetary, educational and attitudinal changes are necessary to improve the functioning of the justice system. It is crucial that the political and military authorities respect the integrity and independence of the judiciary. A first move should be to convene the Supreme Council of Magistracy.

148. The phenomenon of impunity should be addressed in all its aspects. The courts are still reluctant to charge, or have been prevented from charging, members of the military and other security forces for serious criminal offences. Assassinations with a possible political motivation, including the

murder of four journalists, have not been seriously investigated. The Special Representative requests that this problem now be addressed with determination. Article 51 of the 1994 Law on Civil Servants should be repealed without further delay.

149. The Director of the National Police confirmed during the meeting with the Special Representative that he intended to develop further the training of the police on human rights in law enforcement. The Special Representative supports his appeal to the donor community for assistance to establish a police academy for that purpose.

150. The Special Representative has visited two prisons and was alarmed by the conditions therein, which appeared to be systematic rather than isolated and coincidental. Unnecessary bureaucratic problems had delayed the disbursements for food for the prisoners, with severe consequences for their health. The Special Representative has contacted the United Nations Crime Prevention and Criminal Justice Division on the issue and encourages the Royal Government to seek international cooperation in addressing the needs for improved prison conditions.

151. In his report to the General Assembly at its fifty-first session (A/51/453), the Special Representative recommended that the draft law on landmines banning the manufacture, trade and use of anti-personnel mines be submitted for approval to the National Assembly. At the time of writing, this had not been done. The Special Representative also reiterates his appeal for further international assistance to the demining programmes in Cambodia.

152. In his report to the General Assembly the Special Representative also raised the issue of child prostitution and called for more energetic measures by the Government to put a halt to such abuses. The Government sent a high-level delegation to the World Congress against Commercial Sexual Exploitation of Children in August 1996 in Stockholm and presented a comprehensive plan of action against child prostitution and trafficking. It is important that steps now be taken to implement the plan.

153. Apart from reiterating and expanding on previous recommendations the present report focuses on the problem of torture. It became clear to the Special Representative during his second mission that torture was not government policy. On the contrary, the Minister of Justice, the Minister of the Interior and the Director of the National Police have all demonstrated their determination to put an end to such malpractices. There is also in Cambodia a clear legal prohibition against torture and other cruel, inhuman and degrading treatment. Still, torture is not uncommon and has been reported in a number of cases. The Special Representative, therefore, recommends that the legal ban be translated into effective safeguards to protect detainees against torture and other abusive practices.

154. An inter-ministerial commission should be set up to analyse this issue in all its aspects and design a comprehensive strategy for the elimination of torture. Such a strategy should, inter alia, address the lack of detailed legal provisions for the punishment of acts of torture, the absence of a law on evidence, the prevailing weaknesses of the judiciary including measures to

remedy the apparent fear of prosecuting powerful offenders, the shortcomings of the disciplinary system within the police force itself and the negative impact of article 51 of the Law on the Statute of Civil Servants.

155. Another issue raised with particular emphasis in the present report relates to labour rights. The new Labour Law is a considerable step forward in giving legal protection for workers to organize and to bargain collectively. The implementation of these rights and others relating to working conditions is not automatic in a situation of far greater supply than demand for employment. The system of workplace inspections has to be reviewed and made more effective.

## V. CONCLUDING REMARKS

156. There are several positive developments to be reported regarding human rights in Cambodia. Progress is being made on human rights education. Leading Buddhist representatives and monks teach basic ideas of human rights. The non-governmental community is active both in its supportive programmes and through advocacy. Some ministries relate constructively to these groups, to mutual advantage. There is lively discussion of human rights matters in the media and elsewhere.

157. Some proposals for laws of great significance for the respect of human rights have been submitted to the National Assembly. Parliament itself, through its Committee on Human Rights and the Reception of Complaints, has developed a machinery for investigation into alleged human rights violations which, ideally, could promote justice in individual cases and at the same time give impetus for further legal and other reforms in order to safeguard the rights of individuals in general. In the view of the Special Representative, this parliamentary programme is so far the most promising response to the recommendation, supported by the Commission on Human Rights, that an independent national institution be created for the promotion and protection of human rights.

158. However, the human rights situation in Cambodia appears to be fragile. Although the Government has held together, tensions between the two major parties have slowed down the pace of developing laws, structures and broader awareness to protect human rights. Both Prime Ministers have made statements to the Special Representative which unfortunately have not been followed up with concrete action. A gap has developed between word and deed. Several examples are mentioned in this report, for instance the lack of determined action against impunity, including repeal of article 51 of the 1994 Law on Civil Servants, the non-convening of the Supreme Council of Magistracy and the absence of initiatives to investigate seriously acts of political violence. The legal and administrative preparation of the forthcoming elections has been delayed, which raises concerns about the possibilities to safeguard their fairness.

159. At the same time, the Special Representative has been deeply impressed by the dedication to human rights of a number of officials, for example the Minister of Justice, the leadership of the National Police and members of the

inter-ministerial committee preparing reports on the implementation of international human rights treaties. Also, the energy and competence of the non-governmental human rights organizations are good signs for the future.

160. It has also to be remembered that Cambodia's tragic recent history has left deep scars. Although the security situation today is vastly improved, full peace is still not achieved and large areas of the country are traumatized by anti-personnel mines and unexploded ordnance.

161. The country suffers from a lack of educated officials and professionals. Changes of attitude required for widespread understanding of basic democratic principles are only slowly taking place. Corruption exists and the problem of illegal logging is acute. Already after his first two missions, the Special Representative wishes to emphasize that the United Nations approach to supporting human rights in Cambodia needs to be systematic and long term to allow for a sustainable contribution. Cooperation in this field should continue in a spirit of mutual recognition and understanding.

162. Lastly, the Special Representative wishes to emphasize the importance of continued and generous international support to Cambodia, through the United Nations or directly. The ongoing programmes are essential and deeply appreciated. The conduct of the forthcoming elections and other challenges outlined in this report will make the coming couple of years crucial in the efforts to build a society in Cambodia that respects all the human rights of all the people.

Annex

PROGRAMME OF THE SECOND MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

(1-13 DECEMBER 1996)

Sunday 1 December

Arrival at Pochentong Airport

Dinner and review of the mission programme

Monday 2 December

Breakfast with Mr. Benny Widyono, Representative of the Secretary-General in Cambodia

Briefing by the staff of the Cambodia Office

Meeting with Cambodian human rights NGOs

Tuesday 3 December Visit to Kompong Speu province

Meeting with Selliah Nagarajah, Judicial Mentor of the Centre for Human Rights in Kompong Speu and Takeo provinces

Meeting with local human rights NGOs

Visit of the provincial prison and interviews with prisoners

Meeting with the Provincial Court

Wednesday 4 December (Visit to Kompong Speu province, cont.)

Meeting with the Governor of the province

Visit to an internally displaced rural community in Aural district

Visit of the American Red Cross Orthopaedic Centre

Meeting with senior provincial police officers

Thursday 5 December Visit to Kompong Chhnang province

Arrival in and visit of Krang Kontro village, Peam commune, Samaki Meanchey district

Meeting with the Second Vice Governor of the province

Friday 6 December Theme: Torture

Meeting with human rights and Defenders NGOs

Lunch with Sven-Ake Svensson, Country Representative, Swedish International Development Cooperation Agency (SIDA)

Meeting with the Inter-Ministerial Committee on the Convention against Torture

Meeting with Hok Lundi, Director, National Police

Saturday 7 December Theme: Labour rights

Briefing by Cambodian Labour Organization

Briefing by Cambodian League for the Promotion and Defence of Human Rights (LICADHO) and Asian American Free Labour Institute (AAFLI)

Speech delivered at the seminar on "Peaceful conflict resolution, land disputes, the role of the Ombudsman" organized by the National Assembly Human Rights Commission

Visit of two Cambodian enterprises: Concept Garments Ltd., and Garment Apparels Cambodia

Meeting with Ian Cummings, ILO Country Representative and Mar Sophea, Cambodian Labour Organization

Sunday 8 December

Briefing meeting with staff of the Cambodia office of the Centre for Human Rights

Meeting with COFREL and COFEL (NGO coalitions on the elections)

Monday 9 December

Meeting with H.E. Mr. Chem Snguon, Minister of Justice

Meeting with H.E. Mr. Loy Sim Chheang, Secretary-General of the FUNCINPEC Party

Meeting with H.E. Mr. Ung Huot, Minister of Foreign Affairs

Meeting with H.E. Mr. Sonn Sann and Mr. Sonn Soubert, Buddhist Liberal Democratic Party (BLDP)

Meeting with H.E. Mr. Kenneth Quinn, United States Ambassador

Tuesday 10 December

Meeting with H.E. Mr. Sam Rainsy, President of the Khmer Nation Party

Briefing meeting on freedom of expression, the press and the media

Meeting with H.E. Mr. Ieng Mouly, Minister of Information and Chairman of the Cambodian Mine Action Centre

Meeting with the Venerable Tep Vong, Head of the Buddhist Mohanikay Order

Wednesday 11 December

Meeting with H.E. Mr. Samdech Chea Sim, Chairman of the Cambodian People's Party

Audience with His Majesty the King, in the Throne Hall of the Royal Palace

Lunch with representatives of Legal Aid of Cambodia and the Cambodian Defenders Projects

Meeting with H.E. Mr. Kem Sokha, Chairman of the National Assembly Human Rights Commission

Audience with H.R.H. Prince Norodom Ranariddh, First Prime Minister

Dinner with Friedrun Medert, ICRC Country Representative

Thursday 12 December

Lunch with H.E. Mr. Toni Kevin, Australian Ambassador

Meeting with the United Nations Theme Group on Good Governance, Democracy and Human Rights. Theme of the meeting: Prison conditions

Report drafting

Public talk at the Foreign Correspondents Club of Cambodia on "Basic principles of human rights and their significance"

Friday 13 December

Breakfast with the ambassadors or diplomatic representatives of the ASEAN countries

Press conference in Khmer

Press Conference in English

Lunch with H.E. Mr. Gildas Le Lidec, French Ambassador

Departure

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